

Internal Revenue Service

Number: **201324010**

Release Date: 6/14/2013

Index Number: 1502.75-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:5

PLR-149143-12

Date:

March 14, 2013

Legend

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Date 1 =

Date 2 =

Date 3 =

Accounting Firm =

State A =

Dear _____ :

This letter responds to your request for a ruling, dated November 13, 2012, submitted by your authorized representative, requesting a determination under § 1.1502-75(b)(2) of the Income Tax Regulations that Sub 1, Sub 2, and Sub 3 (the “Subsidiaries”) have each joined in the making of the initial consolidated Federal income tax return Parent filed for the year ending on Date 2. The information submitted in that letter and in subsequent correspondence dated January 22, 2013 is summarized below.

SUMMARY OF FACTS

Prior to Date 1, various individual shareholders owned all of the stock in Sub 1, Sub 2, and Sub 3. On Date 1, Parent was incorporated as a State A corporation, and the individual shareholders contributed all of the outstanding stock of the Subsidiaries to Parent in exchange for Parent stock. The Date 1 transaction did not constitute a reverse acquisition within the meaning of § 1.1502-75(d)(3).

Parent retained Accounting Firm to prepare its tax return for the short taxable year ending on Date 2. Parent informed Accounting Firm that Parent and the Subsidiaries intended to file a consolidated income tax return. The return for the taxable year ending on Date 2 was timely filed and included the items of income and deduction for Parent and each of the Subsidiaries for the entire short taxable year. The return also included a Form 851 (Affiliations Schedule) that identified each of the Subsidiaries as subsidiaries that were joining in the making of the consolidated return with Parent.

On or about Date 3, it was discovered that a Form 1122 (Authorization and Consent of Subsidiary Corporation to Be Included in a Consolidated Return) for each of the Subsidiaries was not filed with Parent’s tax return for the taxable year ending on Date 2. The statute of limitations under § 6501(a) has not expired with respect to the return; however, the return is currently under examination.

REPRESENTATIONS

Parent has made the following representations:

- (a) Except for the failure to timely file Forms 1122, Parent and each of the Subsidiaries were eligible to join in the filing of a consolidated Federal income tax return for the taxable year ending Date 2.
- (b) The Subsidiaries were included on the Form 851 attached to the return.
- (c) The income and deductions of each of the Subsidiaries for the short taxable year ending Date 2 were included in the return filed by Parent as the parent of the consolidated group.

- (d) Neither Parent nor any of the Subsidiaries filed a separate return for the taxable year ending Date 2.

APPLICABLE LAW

Section 1.1502-75(a)(1) provides, in part, that an affiliated group of corporations that did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation which has been a member during any part of the taxable year for which the consolidated return is to be filed consents, in the manner provided in § 1.1502-75(b), to the regulations under section 1502. If a group wishes to exercise its privilege of filing a consolidated return, such consolidated return must be filed not later than the last day prescribed by law (including extensions of time) for the filing of the common parent's return.

Section 1.1502-75(b)(1) provides that the consent of a corporation referred to in paragraph (a)(1) of this section shall be made by such corporation joining in the making of the consolidated return for such year. A corporate subsidiary shall be deemed to have joined in the making of such return for such year if it files a Form 1122 in the manner specified in § 1.1502-75(h)(2). Section 1.1502-75(h)(2) provides that, for a group to file a consolidated return under § 1.1502-75(a)(1), a Form 1122 must be executed by each subsidiary. Form 1122 is not required for a taxable year if a consolidated return was filed (or was required to be filed) by the group for the immediately preceding year.

Section 1.1502-75(b)(2) provides that if a member of the group fails to file Form 1122, the Commissioner may under the facts and circumstances determine that such member has joined in the making of a consolidated return by such group. Factors the Commissioner will take into account in making this determination include: (i) whether the income and deductions of the member were included in the consolidated return for such taxable year; (ii) whether a separate return was filed by the member for that taxable year; and (iii) whether the member was included in the affiliations schedule, Form 851 for such taxable year.

RULING

Based solely on the information submitted and representations made, we rule that each of the Subsidiaries is treated, under § 1.1502-75(h)(2), as if it had filed a Form 1122 with the Federal income tax return Parent filed for the short taxable year ending on Date 2. § 1.1502-75(b)(2).

PROCEDURAL STATEMENTS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any other aspect of any transaction or item discussed or

referenced in this letter, or about the tax treatment of any condition existing at the time of, or effects resulting from, any transaction or item that is not specifically covered by the above ruling.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling (PLR-149143-12).

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

A. Graham Magill
Assistant Branch Chief, Branch 5
Office of Associate Chief Counsel (Corporate)

cc: